

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Curves International, Inc.,

Plaintiff,

VS.

Linda S. Mosbarger,

Defendant

Case Action No. 2007-CV-807-MHT

AFFIDAVIT OF MICHAEL R. GRAY

[illegible]

Michael R. Gray, after first being duly sworn upon oath, states and alleges as follows:

1. I am a Principal in the law firm of Gray, Plant, Mooty, Mooty, and Bennett, P.A., which law firm has been retained to represent the Plaintiff in this action. I make this Affidavit based on my first-hand knowledge of the facts set forth herein.

2. Attached as Exhibit A are true and correct copies of pages from the deposition transcript of Linda Lewis.

FURTHER YOUR AFFIANT SAITH NOT.

Dated: February 7, 2008

s/Michael R. Gray
Michael R. Gray

Subscribed to and sworn before
me this 7th day of February, 2008

s/Lori Kleinschmidt
Notary Public

My Commission Expires January 31, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have filed a copy of the following:

- Affidavit of Michael R. Gray

with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Connie Morrow
Charles E. Grainger, Jr.
cmorrow@graingerlegal.com
cgrainger@mindspring.com

Dated: February 7, 2008

**GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.**

By s/Michael R. Gray
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1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION
4

5 CURVES, INTERNATIONAL, INC.,)

6 Plaintiff,)

7)

8 VS.) CIVIL ACTION NO:

9 LINDA S. MOSBARGER,) 2007-CV-807-MHT

10) DEPOSITION OF:

11 Defendant.) LINDA S. MOSBARGER

12

13 S T I P U L A T I O N S

14 IT IS STIPULATED AND AGREED, by and

15 between the parties through their respective

16 counsel, that the deposition of:

17 LINDA S. MOSBARGER,

18 may be taken before Alana Mize, Commissioner and

19 Notary Public, State at Large, at the Law

20 Offices of Granger Legal Services, 4220

21 Carmichael Court North, Montgomery, Alabama

22 36106, on the 2nd day of November, 2007,

23 commencing at approximately 9:20 a.m.

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1 A During my divorce.
2 Q Okay. How long ago was that?
3 A March '06.
4 Q So you're kind of familiar with the
5 rules of how a deposition works or at least how
6 it worked in that case?
7 A Yes.
8 Q You're under oath to tell the truth
9 and I get to ask you questions. And I want to
10 make sure you understand my question before you
11 answer it. So if you have any questions about
12 it, please let me know. If you answer the
13 question, I will assume that you understood it.
14 Okay?
15 A Yes.
16 Q If you need to take a break, let me
17 know. You can't take a break with a question
18 pending, but between questions you can ask for a
19 break and we'll do that. I'll show you some
20 documents. We'll talk about those. We can't
21 talk over each other. And the court reporter is
22 taking down everything that we both say and if
23 you start answering my question before I'm done

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1 with my question, it gets broken up on the
2 record and difficult to read. So I'll ask you
3 to wait until I'm done with my question before
4 you answer and I'll try to do the same to you.
5 Okay?
6 A Yes.
7 Q And that's the last thing, you have
8 to -- everything has to be verbal. Shaking the
9 heads or uh-huhs or huh-uhs don't translate well
10 and if -- I may remind you from time to time
11 that you have to answer verbally. Okay?
12 A Okay.
13 Q All right. Would you give your name
14 and your address for the record, please?
15 A My name is Linda S. Lewis. 750
16 Shields Road, Deatsville, Alabama 36022.
17 Q How long have you lived there?
18 A 25 years.
19 Q Have you ever been convicted of a
20 felony?
21 A No.
22 Q Are you on any medication today that
23 would prevent you from providing full, complete,

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1 and honest answers?
2 A No.
3 Q Give me your educational background
4 starting with high school.
5 A High school diploma.
6 Q What year?
7 A 1974.
8 Q From what high school?
9 A Holtville High School.
10 Q Where is that?
11 A Where I live.
12 Q In Deatsville?
13 A It's a Wetumpka address.
14 Q Okay. Any posthigh school
15 education?
16 A No.
17 Q Well, you hesitated. I'm not
18 talking about college maybe a voc tech school,
19 community college, other course work that you
20 took?
21 A No.
22 Q And you didn't have any experience
23 operating your own business prior to Curves;

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1 correct?
2 A I'm sorry. I didn't understand you.
3 Q Okay. Did you have any experience
4 operating -- owning and operating your own
5 business prior to becoming a Curves franchisee?
6 A Did I have any experience, yes.
7 Q Okay. And what business did you own
8 and operate prior to Curves?
9 A My exhusband and I owned Mike's Gym.
10 Q From what time period?
11 A April 1997.
12 Q Until?
13 A Until our divorce, March 2006.
14 Q And where was Mike's Gym located?
15 A 97 Lightwood Road.
16 Q And what did Mike's Gym do? What
17 it's his business?
18 A Mike's Gym had hydraulics, it was an
19 exercise business.
20 Q Did it have free weights as well?
21 A Yes, there was free weights.
22 Q Was it coed?
23 A Mike's Gym?

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1 **Q** Yes.
 2 **A** No.
 3 **Q** Men only?
 4 **A** Men only.
 5 **Q** What type of instruction or
 6 programming did it offer to it's members?
 7 **A** Just circuit training.
 8 **Q** The address, 97 Lightwood, isn't
 9 that the location, the same address that you
 10 used for one of the Curves?
 11 **A** Yes.
 12 **Q** That was a poor question. Isn't
 13 that the same address that you operated your
 14 Curves franchise for a period of time?
 15 **A** Yes.
 16 **Q** What time period would that have
 17 been?
 18 **A** From May '99 until July '06, 2006,
 19 except for there were two locations, 97
 20 Lightwood Road, 10098 Holtville Road.
 21 **Q** Explain to me the two different
 22 locations. What happened?
 23 **A** The location where I was at the time

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1 was not a good location.
 2 **Q** Well, I don't know what that means.
 3 **A** It means that -- we were getting --
 4 **Q** Which location are you referring to?
 5 **A** 97 Lightwood Road. We were off the
 6 beaten path.
 7 **Q** Well, if you could in a narrative
 8 form explain to me the different chronologies of
 9 where you were with your Curves franchise in
 10 connection with Mike's Gym.
 11 **A** We were adjacent.
 12 **Q** So you weren't in the same space?
 13 **A** Actually he was behind the building.
 14 **Q** So the answer is you weren't in the
 15 same space?
 16 **A** Yes.
 17 **Q** There was a physical wall between --
 18 **A** Yes.
 19 **Q** But they both had the same address?
 20 **A** Yes.
 21 **Q** And so I'm -- the record is clear,
 22 you operated your Curves franchise at 97
 23 Lightwood from May of '99 until July of 2006?

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1 **A** No.
 2 **Q** Okay. What is correct?
 3 **A** I operated the Curves franchise from
 4 May of '99 to 2002.
 5 **Q** And then what?
 6 **A** At 97 Lightwood Road. I relocated
 7 with Curves's permission 10009 Holtville Road,
 8 500 feet away from the old location.
 9 **Q** That was in 2002?
 10 **A** All the way up until July of '06.
 11 **Q** And was Mike's Gym still in
 12 operation at 97 Lightwood in July of '06?
 13 **A** No.
 14 **Q** What happened?
 15 **A** It moved with us.
 16 **Q** To the same physical space?
 17 **A** It moved to 10009 Holtville Road in
 18 a separate room with a wall up with a different
 19 address.
 20 **Q** What was the address of Mike's Gym?
 21 **A** I don't remember. You're sitting on
 22 the line of Wetumpka and Deatsville, Alabama
 23 there. One side was Wetumpka, the other was

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1 Deatsville, but it split right down the middle
 2 of the building.
 3 **Q** But it was physically adjacent to
 4 and separated by a wall?
 5 **A** Exactly.
 6 **Q** And then did Mike's close in July of
 7 '06?
 8 **A** Mike's Gym actually closed during
 9 March of '06. The name Mike's Gym closed after
 10 our divorce and it became Jordan's Gym, slang
 11 name for the Jordan Community Center.
 12 **Q** So you were divorced in March of '06
 13 and why did Mike's -- what did the divorce have
 14 to do with closing Mike's Gym or closing that
 15 name as you put it?
 16 **A** My exhusband had a stroke.
 17 **Q** Okay.
 18 **A** The divorce drug out for two years.
 19 I was awarded Mike's Gym in my divorce. I had
 20 to pay him part of Curves, and I got to keep the
 21 business of Mike's Gym.
 22 **Q** Okay. I've got several questions
 23 about that. Did your exhusband have a stroke

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1 during the divorce proceedings?
 2 A He filed for divorce November of
 3 '04, March of '05 he had a stroke.
 4 Q And the divorce became final in
 5 March of '06?
 6 A (Witness nods head.)
 7 Q As part of that you got -- the
 8 Mike's Gym business was awarded to you?
 9 A Yes.
 10 Q You said something about paying him
 11 for Curves. What was that about?
 12 A The judge ordered me to pay him some
 13 money out of Curves because we were married.
 14 Q So in order to keep the Curves
 15 business, you had to pay him something; is that
 16 correct?
 17 A Yes.
 18 Q Well, how much did you pay him?
 19 A I don't remember. I just remember
 20 just having to refinance my house \$44,000 and
 21 part of that was to pay for his nursing home,
 22 part of that was to pay him out of Curves, part
 23 of that was court cost, part of that -- it was

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1 all broken down.
 2 Q So you don't remember how much you
 3 actually paid him?
 4 A I don't remember.
 5 Q Your divorce papers would specify
 6 that though, wouldn't they?
 7 A Yes.
 8 Q Who was your attorney for your
 9 divorce?
 10 A Jeff Courtney.
 11 Q In --
 12 A Wetumpka.
 13 Q What happened to Mike's Gym after
 14 March of '06?
 15 A At that time I was ready to get out
 16 of the exercise business after all of the
 17 hardship I had went through, so -- but there was
 18 a gym. So I decided that I would sell it and
 19 just work towards my -- well, the -- my landlord
 20 went up on the rent during that time. He went
 21 up on me three times in the small time that I
 22 was there. And so when he went up on the rent
 23 and I was going through all of the hardships

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1 that I was going through, I couldn't stay.
 2 But then I got to thinking about if
 3 he can make money with his property, maybe I
 4 should get into the development stage of
 5 developing business and being entrepreneur
 6 myself.
 7 Q When you say he, you are referring
 8 to your landlord?
 9 A Yes.
 10 Q Okay. So what happened?
 11 A So after the divorce, I got to
 12 thinking about developing maybe some other
 13 businesses other than exercise but there was a
 14 gym. It was still there. So I knew a great
 15 entrepreneur that we sat down and talked and we
 16 decided this is what we were going to do. And I
 17 sold him my part of the business of Mike's Gym
 18 at that time. It was called -- we changed to
 19 name to Jordan's Community Center. He owns it
 20 now.
 21 Q Who is this?
 22 A Truwit Ken Johnson.
 23 Q So did the business relocate, Mike's

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1 Gym, from the Holtville Road address to
 2 someplace else?
 3 A I built a commercial building on my
 4 property. And part of the agreement between me
 5 and Mr. Johnson was that he would allow me to
 6 have interest in his garden center. We talked
 7 about this in December of '06, and then the
 8 trade off would be that he would own Jordan's
 9 Gym. Jordan's Community Center.
 10 Q Do you have your business dealings
 11 with Mr. Johnson in writing?
 12 A Yes.
 13 MR. GRAY: I asked for those,
 14 Ms. Morrow, do you have those?
 15 MS. MORROW: I faxed those to you
 16 last night and they told me you had electronic.
 17 I faxed them about 6:00 o'clock last night.
 18 MR. GRAY: I didn't get it. I don't
 19 know what number you faxed it to.
 20 MS. MORROW: I faxed it to the one
 21 that I faxed the original discovery to.
 22 MR. GRAY: Oh, that's --
 23 MS. MORROW: And Jason assured me

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1 testimony?

2 THE WITNESS: I may have said
3 everyday but not everyday.

4 Q (By Mr. Gray) So what days do you
5 work out there?

6 A Sometimes every other day.

7 Q So you don't have a specific
8 schedule?

9 A No.

10 Q You live right next door to Jordan's
11 Gym; correct?

12 A I do.

13 Q How many feet from Jordan's Gym is
14 your house?

15 A I don't know the feet.

16 Q It's adjacent to it; correct?

17 A Yes.

18 Q It's a walkable distance?

19 A Yes.

20 Q You can see your house from Jordan's
21 Gym?

22 A Yes.

23 Q And you can see Jordan's Gym from

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1 Q Who owns the fixtures and equipment
2 inside?

3 A Mr. Johnson.

4 Q Do you have a bill of sale to
5 Mr. Johnson for that?

6 A This agreement and the LLC is what I
7 have.

8 Q Prior to the time that Mr. Johnson
9 -- prior to the time that you executed Exhibit 1
10 with Mr. Johnson, you owned the fixtures and
11 equipment inside the building?

12 A My exhusband and I owned them.

13 Q Well, didn't you get the business as
14 part of the divorce from your husband?

15 A It was awarded to me.

16 Q Okay. So after March of '06 it
17 belonged to you; correct?

18 A Yes.

19 Q So when you entered into the
20 agreement in December of '06 with Mr. Johnson,
21 did you sign a bill of sale transferring
22 ownership interest of the fixtures and equipment
23 inside to him?

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1 your house; correct?

2 A Yes.

3 Q And you own the land; correct?

4 A Yes.

5 Q And when was the building built?

6 A It was completed the fall of '06.

7 Q Do you have a specific date?

8 A October, November.

9 Q And who paid for it?

10 A A second mortgage, Trust Mark
11 National Bank.

12 Q What was the cost of the building?

13 A I'm not certain.

14 Q A ball park?

15 A Maybe -- maybe -- I'm not certain
16 but maybe 45, 50.

17 Q You built it and you paid for it and
18 you don't know how much it cost?

19 A I let the mortgage company handle
20 it.

21 Q And you're the sole owner of the
22 property?

23 A Yes.

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1 A All I have got is the memorandum of
2 understanding.

3 Q What's the building been used for
4 since it's been -- since it was completed in the
5 fall of '06?

6 A Well, you know, that may be a
7 question you might want to ask him. From what I
8 can see, it's used for birthday parties, charity
9 events, rehab, family reunions. It's a
10 community center, so it could be used for
11 anything.

12 Q You omitted from there gym and work
13 out equipment.

14 A I'm sorry.

15 Q You omitted the work out facility,
16 it's used for that also, isn't it?

17 A I would call it more rehab, but if
18 you want to say it that's fine.

19 Q Well, you're in it every day or
20 every other day.

21 A Did you say rent?

22 Q No, you are physically in the space
23 you said every day or every other day. Have you

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1 draft authorizations for?
 2 A No.
 3 Q Your banking records wouldn't
 4 reflect how many debits you took that month?
 5 A No.
 6 Q You don't have bank records from
 7 July of '06?
 8 A My computer crashed.
 9 Q I'm not asking for you computer.
 10 I'm asking about bank records.
 11 A I don't understand what you are
 12 trying to ask.
 13 MS. MORROW: I object. It is my
 14 understanding all of this is through the Curves'
 15 computer system and Curves has all of this
 16 information as she does not.
 17 MR. GRAY: Your assumption that
 18 Curves has all of this information is just an
 19 assumption.
 20 MS. MORROW: So that's not true?
 21 MR. GRAY: I don't know.
 22 MS. MORROW: That's what I have been
 23 told.

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1 THE WITNESS: Yes, everything
 2 computerized through Curves.
 3 Q (By Mr. Gray) Did you get any bank
 4 communications on a monthly basis?
 5 A No.
 6 Q You didn't get a bank statement?
 7 Your business didn't get a bank statement on a
 8 monthly basis?
 9 MS. MORROW: If you recall or --
 10 THE WITNESS: I -- I honestly don't
 11 know what you're trying to ask but no. That's
 12 all I can say.
 13 MS. MORROW: Did you do this all
 14 through Curves would be an okay answer.
 15 THE WITNESS: I did it all through
 16 Curves.
 17 Q (By Mr. Gray) Who was your bank for
 18 your business in July of '06?
 19 A I don't remember. I was totally out
 20 of the exercise business by then.
 21 Q I didn't ask that, I just asked who
 22 your bank was.
 23 A I don't remember.

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1 Q Do you still have a bank account
 2 now?
 3 A No.
 4 Q You don't have a checking account?
 5 A Personal.
 6 Q All right. Who do you bank with
 7 now?
 8 MS. MORROW: Do you work for
 9 Sterling or --
 10 THE WITNESS: Who do I bank with
 11 now?
 12 MS. MORROW: If you recall.
 13 THE WITNESS: I don't know.
 14 Q (By Mr. Gray) You don't know who
 15 your bank is right now?
 16 A I'm not into the Curves business
 17 anymore.
 18 Q I didn't ask that.
 19 A Are you asking me where my personal
 20 business is? Is that what you're asking?
 21 Q I asked where you bank now.
 22 MS. MORROW: If you have one, if you
 23 don't -- if you are not making money, you may

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1 not have a bank account. I don't know what the
 2 facts are.
 3 MR. GRAY: Counsel, that's coaching.
 4 If you have an objection to the form of the
 5 question make it. Don't suggest an answer to
 6 her by saying if you don't have an account, then
 7 you don't have an account.
 8 MS. MORROW: She'd already answered
 9 that.
 10 MR. GRAY: No, she's being evasive.
 11 MS. MORROW: Asked and answered is
 12 my objection. If she doesn't have it, that's
 13 not evasive.
 14 THE WITNESS: I do not have a
 15 business banking account?
 16 Q (By Mr. Gray) I didn't -- that's not
 17 what I asked. Where do you bank? What's the
 18 name of the bank that you use now?
 19 MS. MORROW: I object to the form.
 20 You asked her does she bank, I object to the
 21 where it is.
 22 Q (By Mr. Gray) Do you have a checking
 23 account?

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<p>1 agreement?</p> <p>2 A I was told by a Curves'</p> <p>3 representative, Mike Carver and Candy Carver, a</p> <p>4 husband and wife that worked for Curves that</p> <p>5 it -- don't worry about getting an attorney to</p> <p>6 look at it, it -- everybody signs the same</p> <p>7 thing, just sign it.</p> <p>8 Q Okay. And the question was, did you</p> <p>9 read it before you signed it?</p> <p>10 A No.</p> <p>11 Q Do you know if at that time your</p> <p>12 husband looked at it before you signed it?</p> <p>13 A No.</p> <p>14 Q Did you ask him for any help or</p> <p>15 advice?</p> <p>16 A No.</p> <p>17 Q Did you work in Mike's Gym?</p> <p>18 A Yes.</p> <p>19 Q So you are familiar with at least</p> <p>20 his gym and how it operated?</p> <p>21 A Yes.</p> <p>22 Q Did you tell Curves --</p> <p>23 A That knew.</p>	<p>1 manager?</p> <p>2 A I don't think she was either one at</p> <p>3 that time. She may have just been an employee.</p> <p>4 Q Okay. Were you employed by Mike's</p> <p>5 Gym?</p> <p>6 A Yes.</p> <p>7 Q In what capacity?</p> <p>8 A Just owner.</p> <p>9 Q I'm showing you what has been marked</p> <p>10 as Exhibit Number 4.</p> <p>11 (Plaintiff's Exhibit 4 was</p> <p>12 marked for identification.)</p> <p>13 Q Do you recall having seen that? Can</p> <p>14 you identify that as your application for</p> <p>15 financial --</p> <p>16 A International -- do I recall it?</p> <p>17 It's been a long time, but it looks like my</p> <p>18 writing</p> <p>19 Q And your signature?</p> <p>20 A Uh-huh, yes.</p> <p>21 Q You don't mention anything about</p> <p>22 Mike's Gym on that application, do you?</p> <p>23 A Oh, I know what this is now. No,</p>
Page 71	Page 73
<p>1 Q -- that you had experience?</p> <p>2 A Yes, they knew.</p> <p>3 Q How did they know it?</p> <p>4 A They came to see me.</p> <p>5 Q Where?</p> <p>6 A At the 97 location, the 97 Lightwood</p> <p>7 Curves location.</p> <p>8 Q At Mike's Gym?</p> <p>9 A Uh-huh.</p> <p>10 Q You have to verbalize your answer?</p> <p>11 A Yes. Sorry.</p> <p>12 Q Did you think it was significant</p> <p>13 that you had some experience in the fitness</p> <p>14 industry prior to signing the Curves franchise</p> <p>15 agreement?</p> <p>16 A I don't remember what I was thinking</p> <p>17 back then. I was excited.</p> <p>18 Q How did you hear about Curves?</p> <p>19 A I worked out at one in Wetumpka and</p> <p>20 the manager there told me that I should own one.</p> <p>21 Q And who is that?</p> <p>22 A Monica Packwood.</p> <p>23 Q Was she the owner or just the</p>	<p>1 there was no need.</p> <p>2 Q You didn't disclose that Mike's Gym</p> <p>3 existed or that you worked there or that you</p> <p>4 were employed there; correct?</p> <p>5 A There was no need to, right.</p> <p>6 Q Okay. And at the time that you</p> <p>7 applied for or filled this out, you were an</p> <p>8 executive assistant at Sterling Bank; correct?</p> <p>9 A I worked for Sterling in the same</p> <p>10 time Mike had his gym.</p> <p>11 Q Well, again on the lower portion of</p> <p>12 the first page you only write that you're an</p> <p>13 executive assistant for Sterling Bank. There's</p> <p>14 nothing about Mike's Gym, is there?</p> <p>15 A No.</p> <p>16 Q So you were an executive assistant</p> <p>17 at Sterling Bank at the time?</p> <p>18 A Yes.</p> <p>19 Q And is that the location that's</p> <p>20 right next door here?</p> <p>21 A Yes.</p> <p>22 Q Okay. I only have one copy. Can I</p> <p>23 see that? After you signed the franchise</p>

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1 agreement, you went to training for Curves for a
 2 week; correct?
 3 A It was less than a week, yes, less
 4 than a week.
 5 Q And where did you go to do that?
 6 A I believe it was Waco.
 7 Q You were involved with litigation
 8 with Curves prior to this lawsuit; correct?
 9 A Yes.
 10 Q In 2001?
 11 A I don't remember if it was one or --
 12 Q Okay. And that lawsuit involved a
 13 dispute about you opening a second location
 14 without permission; correct?
 15 A That's what it was about, yes.
 16 Q And that case was resolved; correct,
 17 before trial?
 18 A It was thrown out of court.
 19 Q And do you remember the terms of the
 20 resolution, who did what?
 21 A Curves didn't file something or
 22 another on time and the judge threw it out.
 23 Q Okay. Did you close -- well, did

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1 you disassociate from studio B as part of that?
 2 A I never was associated with it.
 3 Q You've seen the pictures of you
 4 saying grand opening and Studio A was --
 5 A It was for my daughter.
 6 Q Well, okay.
 7 MS. MORROW: I haven't seen those.
 8 MR. GRAY: I know.
 9 Q After that litigation was resolved
 10 in whatever way it was resolved, you continued
 11 operating your Curves location in Deatsville;
 12 correct?
 13 A Yes.
 14 MR. GRAY: I'm not going to mark it
 15 but just for your edification.
 16 MS. MORROW: Is that it on the
 17 picture that you were talking about that you
 18 have that?
 19 MR. GRAY: I don't know whether they
 20 are attached to this or not, no.
 21 MS. MORROW: If you could get it to
 22 me, you've seen it so someone has one, you can
 23 get me a copy.

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1 MR. GRAY: Well, yeah. Okay.
 2 MS. MORROW: Is this my copy?
 3 MR. GRAY: Yeah.
 4 MS. MORROW: Thank you.
 5 Q (By Mr. Gray) Your daughter that was
 6 involved in it was Ms. Spivey; is that correct?
 7 A Yes.
 8 Q I'm showing you what has been marked
 9 as Exhibit Number 5. Can you identify that as a
 10 letter that you wrote to Curves in October of
 11 '06?
 12 (Plaintiff's Exhibit 5 was
 13 marked for identification.)
 14 A This is the letter that I wrote to
 15 Curves to shut down my business.
 16 Q Okay. And the --
 17 A Wait just a minute. October 3rd is
 18 not the correct date, not when I actually shut
 19 down. Let me read this for a minute.
 20 Q Sure.
 21 MS. MORROW: It's got a --
 22 THE WITNESS: Okay. July '06.
 23 Good. I see it now.

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1 Q (By Mr. Gray) You wrote the letter
 2 on October 3rd; correct?
 3 A Yes, after I -- hold on just a
 4 minute.
 5 MS. MORROW: Do you have a copy of
 6 that September 15th letter?
 7 MR. GRAY: I think I do.
 8 MS. MORROW: I would like a copy of
 9 that too.
 10 MR. GRAY: It is just a collection
 11 letter, she is behind on fees it says --
 12 MS. MORROW: If you can give me a
 13 copy so to make it --
 14 MR. GRAY: Can you make a list of
 15 what you want? Otherwise I am going to forget.
 16 MS. MORROW: Yeah.
 17 Q (By Mr. Gray) Have you had a chance
 18 to read that?
 19 A Yes.
 20 Q Do you recall writing it?
 21 A Yes.
 22 Q Do you remember what the September
 23 15th letter is that you are referring to?

(Pages 78 to 81)

21

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<p>1 A No, but Curves should have a copy of</p> <p>2 it.</p> <p>3 Q Yeah. And I will tell you it's a</p> <p>4 letter saying you are behind in fees.</p> <p>5 A Oh, okay.</p> <p>6 Q And this is, I think, you responded</p> <p>7 to that. In the first paragraph, you refer to</p> <p>8 the fact that there is high rent and there is no</p> <p>9 other building available to move into the</p> <p>10 community. This is as of October '06. You were</p> <p>11 building the building on your property at that</p> <p>12 time; correct?</p> <p>13 A That's right.</p> <p>14 Q Okay. And you don't know whether</p> <p>15 the building was actually done as of the time</p> <p>16 that you wrote this letter or not, do you?</p> <p>17 A I do not.</p> <p>18 Q Do you know whether you got a</p> <p>19 certificate of occupancy from your local</p> <p>20 municipality when your building was done?</p> <p>21 A We don't have to do that. We don't</p> <p>22 have any codes in an unincorporated area.</p> <p>23 Q Do you have your paperwork with your</p>	<p>1 Q In the first paragraph, the first</p> <p>2 sentence -- well, it also says you lost your</p> <p>3 husband to stroke last year. Did he pass away?</p> <p>4 A No.</p> <p>5 Q And by this time, October of '06,</p> <p>6 your divorce had been final; correct?</p> <p>7 A Yes.</p> <p>8 Q You say that in the second paragraph</p> <p>9 Janie Little agreed that she had visited the</p> <p>10 area, etcetera, "and there was no where else for</p> <p>11 me to relocation." You could have relocated to</p> <p>12 the building that you were building; correct?</p> <p>13 A No, not at that time.</p> <p>14 Q Why not?</p> <p>15 A Because I wasn't sure exactly about</p> <p>16 what I wanted to do.</p> <p>17 Q Well, theoretically you could have</p> <p>18 relocated to that building?</p> <p>19 A No.</p> <p>20 Q Why not?</p> <p>21 A Just wasn't what I wanted to do at</p> <p>22 that time.</p> <p>23 Q Oh, okay. That's different than</p>
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<p>1 contractor who built it?</p> <p>2 A My nephew did it.</p> <p>3 Q Is he a contractor?</p> <p>4 A Yes.</p> <p>5 Q Okay. Do you have any paperwork</p> <p>6 with him?</p> <p>7 A I'm not sure where it is.</p> <p>8 Q Would that paperwork indicate when</p> <p>9 it was done?</p> <p>10 A It could.</p> <p>11 Q You have electricity bills, phone</p> <p>12 bills, utility bills for the building; correct?</p> <p>13 A Not at that time.</p> <p>14 Q Well, do you have them now?</p> <p>15 A January 1, '07.</p> <p>16 Q That's when the first ones came in?</p> <p>17 A That's when the business actually --</p> <p>18 the community center actually went into business</p> <p>19 with Ken Johnson.</p> <p>20 Q I understand that. But when's the</p> <p>21 first time that you paid a utility bill for the</p> <p>22 building?</p> <p>23 A I don't remember.</p>	<p>1 having the ability to if you desire to do that;</p> <p>2 correct?</p> <p>3 MS. MORROW: I object. This is</p> <p>4 asked and answered. She's told --</p> <p>5 Q (By Mr. Gray) The building was</p> <p>6 available and you could have used it for a Curve</p> <p>7 location had you wanted to?</p> <p>8 A By October 3rd was it available? I</p> <p>9 don't know. I don't remember what --</p> <p>10 Q This time period, the end of --</p> <p>11 A It was in the fall when it was</p> <p>12 finished.</p> <p>13 MS. MORROW: It could have been</p> <p>14 December, November, you don't know.</p> <p>15 THE WITNESS: It could have -- yeah.</p> <p>16 Q (By Mr. Gray) The building is within</p> <p>17 the territory that's specified in the franchise</p> <p>18 agreement; correct?</p> <p>19 A The city limits?</p> <p>20 Q Yes.</p> <p>21 A No.</p> <p>22 Q It's not the Deatsville?</p> <p>23 A No.</p>

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- 1 **Q** What city limits is it in?
 2 **A** We don't have city limits.
 3 **Q** You live in Deatsville, the address
 4 is Deatsville; correct?
 5 **A** I don't live in Deatsville, I live
 6 in Holtville.
 7 **Q** Okay. You just -- when I asked you
 8 your address at the beginning of deposition you
 9 said Deatsville?
 10 **A** Our address is Deatsville but we
 11 live in Holtville.
 12 **MS. MORROW:** Just for your -- some
 13 people in Holtville have a Wetumpka address,
 14 some people have a Deatsville address. The
 15 unincorporated area is on the map is Holtville.
 16 The high school, the elementary, the middle
 17 school, that's Holtville. It's not in
 18 Deatsville and it's not this Wetumpka.
 19 And I should have objected earlier
 20 with -- for clarification purposes when she said
 21 she graduated, you know, from Holtville and you
 22 said that's in Deatsville, it's -- it's not.
 23 **Q** (By Mr. Gray) The last sentence in

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- 1 the second paragraph says, "I have several bank
 2 draft for members that have put stop payment on
 3 their drafts." Do you see that, the very end of
 4 the second paragraph?
 5 **A** Second paragraph?
 6 **Q** I guess it is the third paragraph if
 7 you count the one sentence right here
 8 (indicating).
 9 **THE WITNESS:** Do you see it,
 10 Connie?
 11 **Q** (By Mr. Gray) Look here
 12 (indicating).
 13 **A** "I have several bank drafts from
 14 members who have put stop payments on their
 15 drafts." I've got -- I kept those.
 16 **Q** Okay. And my question is that
 17 indicates that is in fact how you did get paid
 18 by bank draft; correct? That's how members paid
 19 their monthly fees?
 20 **A** Right.
 21 **Q** And do you know why members were
 22 putting stop payments on their drafts?
 23 **A** They don't like Curves.

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- 1 **Q** And was that what they were telling
 2 you?
 3 **A** They didn't like the contract. They
 4 didn't like people gets into their checking
 5 accounts. They don't like Curves system, that's
 6 exactly what they said.
 7 **Q** Okay. You say, "Bottom line, I am
 8 out of business with Curves because I have no
 9 building and no more market." You didn't
 10 mention the fact that you were building a
 11 building on your property in this letter, did
 12 you?
 13 **A** No, because I had no intentions of
 14 owning a gym.
 15 **Q** Okay. And then you say, "You do
 16 have any permission to shut down the Deatsville,
 17 Alabama franchise. However it has been shut
 18 down since July of '06. I have since referred
 19 my members to the Wetumpka, Prattville, and
 20 Clanton Curves, which are at my Curves
 21 doorsteps." I thought you said you didn't refer
 22 people to other curves.
 23 **A** They were there were other Curves.

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- 1 They knew they could go. And when they asked me
 2 would they go, I said yes. But I called Curves
 3 and asked them to pick up the files.
 4 **Q** They have no obligation to do that,
 5 do they?
 6 **A** Curves?
 7 **Q** Yeah.
 8 **A** They are asking for them. They have
 9 been asking for them.
 10 **Q** Did you send them to them?
 11 **A** No.
 12 **Q** Did you offer to send them to the
 13 other three locations?
 14 **A** No because of personal -- I figured
 15 that should go through the Curves office.
 16 **Q** Then the last paragraph you say, the
 17 equipment needs to be picked up because you are
 18 paying storage fees. Where was it being stored
 19 in October of '06?
 20 **A** In my barn.
 21 **Q** So you weren't paying storage fees?
 22 **A** I'm paying rent. I'm paying
 23 mortgage payments every month.

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1 A No.

2 **Q Your lawyers did?**

3 A Yes.

4 **Q And at your request?**

5 A Yes.

6 **Q Okay. And you don't own any**

7 **ownership interest in Jordan Community Center,**

8 **LLC?**

9 A I do not.

10 **Q Yet you asked your lawyer to draft**

11 **the paper and you filed them and paid the filing**

12 **fee?**

13 A It was easier to do it that way,

14 yes.

15 MS. MORROW: Do you need a break for

16 lunch?

17 THE WITNESS: No, I'm okay unless

18 you do.

19 MS. MORROW: No, I'm fine.

20 **Q (By Mr. Gray) Do you recognize**

21 **Exhibit Number 10 as the responses to the**

22 **discovery requests in this case?**

23 **(Plaintiff's Exhibit 10 was**

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1 **marked for identification.)**

2 A Yes, I do.

3 **Q Do you recognize your signature I**

4 **guess on the third to the last page? They are**

5 **not numbered.**

6 A Yes.

7 **Q Okay.**

8 MS. MORROW: Just for the record for

9 clarification, on number one is a typo and

10 there's a also another typo on the certificate

11 of service. It says September it should say

12 October. And Reynolds should say Johnson.

13 MR. GRAY: Where are you referring

14 to?

15 MS. MORROW: The number one general

16 objections there's a typo that says it should be

17 Mr. Johnson. And that's just a typo or an over

18 site and then the certificate of service should

19 say October, the 26th day of October. The date

20 is right, the day part the right, but the --

21 there was one other one. Yeah, San Antonio on

22 page -- and this has to do with, you know, this

23 was expedited discovery and we had to get it out

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1 quickly because you all were in Minnesota. And

2 got to the end of the day like on about 4:45 on

3 the day that we had to get it to you all and

4 it's just a lack of proofing. But any way on

5 number 14 should be Waco, Texas instead of San

6 Antonio, Texas.

7 MR. GRAY: Where, the first

8 paragraph?

9 MS. MORROW: Uh-huh. And as far as

10 I know, those are the only typos.

11 MR. GRAY: Okay. Number one in the

12 general objections, who -- which Mr. Johnson are

13 you referring to there?

14 MS. MORROW: Ken, Truwit Ken

15 Johnson. But it appears to me some of the

16 things being requested were, that was my

17 objection.

18 **Q (By Mr. Gray) In number one what**

19 **does your daughter know about the allegations in**

20 **the complaint?**

21 A She knows what's going on.

22 **Q How?**

23 A She knows I have been sued again by

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1 Curve's, and that's all she knows.

2 **Q And what does Mr. Johnson know?**

3 A He knows I have been sued by Curve's

4 again.

5 **Q Did he know about the first case?**

6 A I talked to him about it.

7 **Q When? Back when it was happening?**

8 A No. It could have been two and a

9 half years ago when I talked to him about it, I

10 don't quite remember.

11 **Q From April of '99 to the present,**

12 **the only employee that you ever had was your**

13 **daughter?**

14 A That's correct.

15 **Q When you stopped operating Curve's**

16 **in July of 2006, why didn't you cancel the phone**

17 **number at that time?**

18 A Because there was another gym that

19 had the same phone number, actually had it

20 before Curve's. It was the other gym's phone

21 number first.

22 **Q Mike's?**

23 A Yes. But then Jordan's.

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1 **Q I thought you closed Mike's in March**
 2 **of 2006?**
 3 **A** No, that was our divorce. It was
 4 his -- his gym was handed to me in the divorce
 5 or awarded to me.
 6 **Q So in July of 2006 you closed**
 7 **Curve's but Mike's Gym continued to operate?**
 8 **A** Right.
 9 **Q And you owned it?**
 10 **A** It was awarded to me.
 11 **Q So you owned it?**
 12 **A** I guess I did.
 13 **Q Okay. And when did that close?**
 14 **A** I -- I don't know because I mean
 15 after everything that Curve's has put me through
 16 and the divorce, I lost interest.
 17 **Q That doesn't answer the question.**
 18 **A** I don't know.
 19 **Q You don't know the date the business**
 20 **closed?**
 21 **A** I do not know.
 22 **MS. MORROW:** Are you asking the date
 23 that Mike's Gym closed?

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1 **MR. GRAY:** Yes.
 2 **MS. MORROW:** You know the date that
 3 Mike's closed.
 4 **THE WITNESS:** Oh, Mike's Gym, you
 5 said Jordan's.
 6 **Q (By Mr. Gray) Okay.**
 7 **A** You said Jordan's Gym.
 8 **Q If I did -- what's the date that**
 9 **Mike's Gym closed?**
 10 **A** Mike's Gym closed right after the
 11 divorce was final. There was no Mike's Gym
 12 anymore.
 13 **Q And the divorce was March of 2006?**
 14 **A** It became Jordan's Gym. There was
 15 no Mike's Gym. It was named Jordan's Gym.
 16 **Q Okay. So in March of 2006, Mike's**
 17 **Gym became Jordan's Gym?**
 18 **A** Right.
 19 **Q At the same location as your Curve's**
 20 **location only adjacent to it?**
 21 **A** Right.
 22 **Q And how long did Jordan's Gym**
 23 **operate at that location?**

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1 **A** I don't -- you know, like I said, I
 2 was so out of the exercise business, I do not
 3 know.
 4 **MS. MORROW:** Formally did you ever
 5 close it down?
 6 **THE WITNESS:** I don't -- no, I did
 7 not.
 8 **MS. MORROW:** Not until you sold it?
 9 **THE WITNESS:** Not until I sold it.
 10 **MS. MORROW:** But you don't know if
 11 people were using it, you weren't there?
 12 **THE WITNESS:** No.
 13 **Q (By Mr. Gray) Who operated it?**
 14 **A** Nobody.
 15 **Q Who opened the door in the morning?**
 16 **A** I have no idea. They went in
 17 themselves, I was out of there.
 18 **Q You were awarded the business, you**
 19 **changed the name to Jordan's Gym, and basically**
 20 **abandoned it?**
 21 **A** I didn't abandon it. I knew it was
 22 there, but I wasn't interested in it.
 23 **Q Did you collect any money from the**

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1 **people that were using it?**
 2 **A** No.
 3 **Q You just left the front door open?**
 4 **A** You have got to remember that people
 5 didn't want it either.
 6 **Q I'm just asking questions. I don't**
 7 **have to remember anything.**
 8 **A** No.
 9 **Q I wasn't there.**
 10 **MS. MORROW:** And if you don't
 11 remember because of everything going on in your
 12 life at that time --
 13 **MR. GRAY:** That's -- Counsel, make
 14 an objection to a question.
 15 **MS. MORROW:** Okay. I object that
 16 she's -- to the form of the question.
 17 **Q (By Mr. Gray) All right. This all**
 18 **started with the phone number, and you said that**
 19 **that phone number was also being used by**
 20 **Jordan's Gym when you closed down Curve's in**
 21 **July of '06. Now you are telling me in March of**
 22 **'06 it went from Mike's Gym to Jordan's Gym but**
 23 **you didn't know anything about what -- you**

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1 didn't care. How did people get in? You left
2 the front door open for months and people came
3 and went as they pleased, didn't pay any fees,
4 you just didn't care, is that your testimony?

5 A I was out of the exercise business
6 in my mind. I didn't care.

7 Q Okay. Then why change the name from
8 Mike's Gym to Jordan's Gym?

9 A Because you don't understand our
10 divorce, what happened.

11 Q Tell me. What did you change the
12 name from Mike's Gym to Jordan's Gym?

13 MS. MORROW: Yeah, clarify that
14 whole thing, that's what he's asking.

15 THE WITNESS: Let me tell you what
16 happened. My husband filed for divorce.

17 MS. MORROW: Who was your husband?

18 THE WITNESS: Mike Mosbarger
19 November the 4th. I mean November of '04. In
20 March, he had a terrible stroke. He laid in the
21 bathroom in an apartment by himself for three
22 days. No one found him until his boss went and
23 knocked on the door and found him. He blew his

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1 brain out with a stroke. He had high
2 cholesterol. He had high blood pressure. He
3 was a vegetable. It drug -- it drug the divorce
4 out.

5 MS. MORROW: Because of that, the
6 Mike's Gym you felt needed to be changed?

7 MR. GRAY: Wait, Counsel.

8 MS. MORROW: But that's true. I
9 mean, I'm just -- I'm not wanting her --

10 MR. GRAY: I would appreciate it if
11 you would just not do that.

12 MS. MORROW: Okay.

13 MR. GRAY: Let her answer the
14 question. If needs clarification she can do it,
15 I can ask. I don't want you to testify.

16 MS. MORROW: My concern was she was
17 going to give us a narrative of every day by day
18 detail and you really were just interested in
19 why the name had to be changed is my
20 understanding. So she's answering it.

21 MR. GRAY: She's answering it in the
22 way she wants to without, I would appreciate,
23 coaching from you.

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1 Q So?

2 A So it drug out for two years. And
3 in that same the year that he had his stroke, I
4 lost my mother, I lost my little brother, and I
5 lost a good friend to leukemia.

6 Q Okay.

7 A That January my daughter's husband
8 was on meth, and she has three little babies.
9 Where was my mind to exercise?

10 Q Okay. So how does that play into
11 changing the name?

12 A I did not want Mike's name on
13 anything that I owned because of what he put me
14 through.

15 Q Okay. So when the divorce became
16 final in March of '06 and you were awarded that
17 business, you changed the name to Jordan's Gym?

18 A Well, the community actually changed
19 it.

20 Q How did the community change it?

21 A They just -- it was Jordan's
22 Community Center, we were planning on Jordan
23 Community Center developing and that kind of

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1 thing and it just became Jordan's Gym and that
2 was it.

3 Q Well --

4 A But you have still got to remember
5 no one was interested.

6 Q In March of '06 it was still located
7 back on Holtville Road; correct?

8 A Yes.

9 Q Okay. And in March of '06 you
10 changed it from Mike's Gym to Jordan's Gym. How
11 long did that business operate at that location?

12 A I don't know exactly when the name
13 was changed.

14 Q Okay. The question is --

15 A It was changed by a sign. Mike's
16 Gym came down, Jordan's gym went up. I don't
17 remember when it was changed during that year.

18 Q And but you did that?

19 A I was very uninterested at that
20 time.

21 Q But you made the change; correct?

22 A I put the sign up there.

23 Q Okay. And you don't recall how long